

DEC 17 2007

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN ERHOMOBHENE AZEKE,

Petitioner,

v.

MICHAEL B. MUKASEY, \*\* Attorney  
General,

Respondent.

No. 06-72987

Agency No. A96-387-207

MEMORANDUM \*

JOHN ERHOMOBHENE AZEKE,

Petitioner,

v.

MICHAEL B. MUKASEY, \*\* Attorney  
General,

Respondent.

No. 06-73795

Agency No. A96-387-207

On Petitions for Review of Orders of the

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* Michael B. Mukasey is his predecessor, Alberto R. Gonzales, as Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

Board of Immigration Appeals

Argued and Submitted November 8, 2007  
San Francisco, California

Before: KLEINFELD, SILVERMAN, and W. FLETCHER, Circuit Judges.

John Azeke, a native and citizen of Nigeria, petitions for review of the Board of Immigration Appeals' final order of removal and order denying reconsideration.<sup>1</sup> We lack jurisdiction to consider Azeke's untimely petition for review in 06-72987 and dismiss the petition. *See Magtanong v. Gonzales*, 494 F.3d 1190, 1191 (9th Cir. 2007), *citing Bowles v. Russell*, 127 S.Ct. 2360, 2366-67 (2007) (per curiam).

As for the petition for review in 06-73795, we dismiss in part and grant in part. We dismiss for lack of jurisdiction the portion in which Azeke claims that the BIA abused its discretion in denying reconsideration of whether changed circumstances excused the untimely asylum application. Because the issue surrounding the asylum application involves disputed facts about when Azeke's temporary visitor's visa expired, we lack jurisdiction to consider the claim. *See Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007).

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<sup>1</sup>Azeke waived his motion to reopen and Convention Against Torture claims by failing to address them in his opening brief. *Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005).

On the other hand, we do have jurisdiction to review whether the BIA abused its discretion in denying the motion for reconsideration concerning the request for withholding of removal. *See* 8 U.S.C. § 1252(b)(1); *Valeriano v. Gonzales*, 474 F.3d 669, 672-73 (9th Cir. 2007). Azeke asserts that the BIA’s adverse credibility finding was premised on errors of fact and not supported by substantial evidence in the record. We agree.

The BIA’s finding that Azeke testified inconsistently about his elections report is not supported by the record. After testifying that he “wrote a statement in report,” Azeke used the terms “statement” and “report” interchangeably. Nor is the BIA’s finding that Azeke’s testimony was inconsistent with the supporting letter from the Legal Defense Centre supported by the record. The BIA clearly misread the letter to state that Azeke’s 2000 election report was “comprehensive and indepth.” The letter refers to a “comprehensive and indepth report” regarding the 1999-2000 “kaduna religious riots,” not the 2000 elections. The letter and testimony are consistent regarding the 2000 elections. Finally, the BIA’s finding that Azeke inconsistently testified that the relevant official was both a national and local politician is not supported by the record. Rather, the testimony and documents establish that the official initially held a local position, but was promoted to a higher position within the national party. Because Azeke brought to

the Board's attention several material factual errors underlying its adverse credibility finding, the BIA abused its discretion by denying the motion to reconsider.

Petition for Review in 06-72987 DISMISSED.

Petition for Review in 06-73795 DISMISSED in part, GRANTED in part and REMANDED to the BIA.